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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ARB.P. 203/2012**

CENTRAL BANK OF INDIA ..... Petitioner
Through: Mr. Jaswinder Singh with Ms. Shipra Shukla, Advocates.

versus

UNION BANK OF INDIA & ORS ..... Respondents
Through: Mr. S.N.Relan, Adv. with Mr.Abhinav Thareja, Adv. for R-2.

CORAM: JUSTICE S.MURALIDHAR

O R D E R
% **25.10.2016**

1. The short question that arises for determination in this petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') is whether the dispute *inter se* between the parties to the present petition i.e., the Petitioner, Central Bank of India (CBI) and Respondent No. 1, Union Bank of India (UBI), Respondent No. 2, State Bank of Hyderabad (SBH) and Respondent No. 3, Karnataka Bank, falls within the ambit of the expression 'any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest" occurring in Section 11 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act')?

2. The background facts are that an application was filed by UBI being before the Debts Recovery Tribunal-III (DRT) against the borrower and the guarantors (Defendants 1 to 3), SBH (Defendant 4), Karnataka Bank (Defendant 5) and Central Bank of India (Defendant 6) under Section 19 of the Recovery of Debts Due to Banks and Financial Institutes Act, 1993 for

recovery of a sum of Rs. 29,63,458 along with cost, charges, *pendente lite* and future interest. In order to secure the cash credit facilities sanctioned by UBI the borrower hypothecated the stocks lying in its business premises in Delhi in favour of UBI. Further, a mortgage of the immovable property was made in favour of UBI and the title deeds in respect of one portion of the built up property at Dilshad Colony were deposited with the UBI.

3. The other Banks also contended that there had been hypothecation of the stocks and a creation of a mortgage over the said immoveable property in question in their favour as security for the credit facilities advanced by them to the same borrower.

4. One of the issues that arose in the OA is whether the mortgage by way of title deeds in favour of UBI would have priority over the mortgage in favour of the other banks. In para 15 of the order dated 24th February, 2016, the DRT came to the conclusion that the mortgage in favour of the SBH being at an earlier point in time would deserve priority over the mortgage in favour of the other institutions.

5. The Central Bank of India has filed the present petition in view of the order passed by the Debts Recovery Appellate Tribunal (DRAT) in the appeal filed by SBH (SA No. 280 of 2010) in some other matter in which *inter alia* the DRAT held by an order dated 6th May, 2011 that the DRT would have no jurisdiction to decide the *inter se* disputes between the financial institutions as regards division of the sale proceeds of the mortgaged property. In the same order, the DRAT gave liberty to the SBH to approach the High Court for the appointment of an Arbitrator.

6. Learned counsel for SBH resists the present petition on the ground that there is no dispute *inter se* between the Petitioner on the one hand and the Respondent Banks on the other “relating to securitisation or reconstruction".

As regards non-payment of any amount due including interest' it is only *qua the* borrower and not the financial institutions. Therefore, according to him, the dispute raised by the Petitioner on the question of genuineness or validity of the title deeds deposited by the borrower cannot be referred to the arbitration.

7. Having considered the respective submissions of learned counsel for the parties, the Court is inclined to agree with the submissions made by SBH that the dispute now sought to be raised by the Petitioner on the validity and genuineness of the title deeds deposited by the borrower with the financial institutions including itself does not partake of any of the disputes mentioned in Section 11 of the SARFAESI Act. In other words, it is not a dispute relating to securitisation or reconstruction or non-payment of any amount due including interest amongst the other parties and certainly not between them parties to the present petition.

8. As rightly pointed out by the SBH it filed an application before the DRT only for the enforcement of the security interest which is dealt with in Chapter III of SARFAESI Act from Sections 13 to 19 thereof.

9. Consequently, the Court declines to accept the prayer made in this petition while leaving it open to the parties to seek other remedies in accordance with law. The petition is dismissed with no orders as to costs.

S.MURALIDHAR, J

OCTOBER 25, 2016/*Rm*